

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 BASKIM HOLDINGS, INC.,

5 Plaintiff,

6 v.

7 TWO M, INC. and OMAR ALDABBAGH,

8 Defendants.
9

Case No. 2:16-cv-01898-APG-GWF

**ORDER GRANTING MOTION IN
LIMINE REGARDING DEFENDANTS'
EXPERT CARROLL**

(ECF Nos. 130, 140)

10 I grant Plaintiff Baskim Holdings, Inc.'s motion in limine to exclude the testimony and
11 reports of the defendants' expert Thomas Carroll, Ph.D. ECF Nos. 130, 140. First, the defendants
12 fail to explain why Dr. Carroll submitted two supplemental reports after the disclosure deadline.
13 The defendants correctly point out that Federal Rule of Civil Procedure 26(e)(2) imposes a duty
14 to supplement an expert's report. But that duty does not give them the right to update the report
15 after the deadline with information and opinions that were available before the deadline. "A party
16 may not use a supplemental report to disclose information that should have been disclosed in the
17 initial expert report, thereby circumventing the requirement for a timely and complete expert
18 witness report." *Allstate Ins. Co. v. Balle*, No. 2:10-cv-2205-APG-NJK, 2013 WL 5797848 at *2
19 (D. Nev. Oct. 28, 2013). Because there is no reason why Dr. Carroll could not have provided the
20 updated calculations and report by the disclosure deadline, his supplements are excluded.

21 Dr. Carroll's initial report is premised on incorrect legal bases. He calculates royalties
22 from the date the defendants were notified about the infringement. Royalties may be recovered
23 for the entire period of the infringement. *Wolfe v. National Lead Co.*, 272 F.2d 867, 871 (9th Cir.
24 1959), *cert. denied* 362 U.S. 950 (1960); *see also Sands, Taylor & Wood v. Quaker Oats Co.*, 34
25 F.3d 1340, 1343-45 (7th Cir. 1994) (approving calculation of royalties for the infringing period).
26 Dr. Carroll also incorrectly asserts that Baskim is not entitled to recover both royalty payments
27 (as a damage sustained by the plaintiff) and the defendants' profits because that would constitute
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1 double recovery. Yet that is allowed by the Lanham Act. 15 U.S.C. § 1117(a) (“When a violation
2 of any right of the registrant of a mark . . . shall have been established in any civil action arising
3 under this chapter, the plaintiff shall be entitled . . . to recover (1) defendant’s profits, (2) any
4 damages sustained by the plaintiff, and (3) the costs of the action.”). Thus, Dr. Carroll’s report is
5 incorrect as a matter of law.

6 Because Dr. Carroll’s report is incorrect as a matter of law, it is neither relevant nor
7 reliable. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589 (1993). It will not
8 help the jury understand the evidence or determine any fact in issue. Fed. R. Evid. 702(a). Thus,
9 Dr. Carroll’s report and his testimony will be excluded at trial.

10 IT IS THEREFORE ORDERED that the plaintiff’s motion in limine (**ECF Nos. 130, 140**)
11 **is granted.** The testimony and reports of defendants’ expert Thomas Carroll, Ph.D. are excluded
12 from trial.

13 DATED this 8th day of June, 2018.

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16 ANDREW P. GORDON
17 UNITED STATES DISTRICT JUDGE
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